

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MAY HUANG,

Plaintiff,

v.

SEATTLE PUBLIC LIBRARY,

Defendant.

CASE NO. C14-1986RAJ

ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS AND GRANTING IN
PART AND DENYING IN PART
PLAINTIFF'S MOTION TO AMEND

I. Introduction

This matter comes before the Court upon defendant Seattle Public Library's ("SPL") 12(c) Motion to Dismiss, and Plaintiff May Huang's Cross Motion for Leave to Amend. Dkts. #27 and #29. The Court finds oral argument unnecessary to resolve this motion. For the reasons stated herein, the Court GRANTS SPL's motion. Plaintiff's cross motion is GRANTED in part and DENIED in part.

II. Background

For approximately twenty years, Plaintiff, a Chinese woman who is over the age of 40, was an employee of the Seattle Public Library ("SPL"). See Dkts. #11 at 4 and #13 at 5.

1 Plaintiff worked as a Library Assistant I (“LA I”) until 2004, when she was promoted to work
2 as a Library Assistant II (“LA II”). Dkts. #11 at 2 and #13 at 5. Plaintiff claims that since 2006
3 she has repeatedly applied to work as a Library Assistant IV (“LA IV”). Dkt. #11 at 3. SPL
4 does not deny that, since 2010, Plaintiff applied for more than fifteen open positions at SPL.
5 Dkt. #13 at 6. Plaintiff was not promoted to the LA IV position; according to Plaintiff, she has
6 not been able to work for SPL since July 2014. Dkt. #11 at 5-6.

7 On December 31, 2014, Plaintiff filed this suit. Dkt. #1. Plaintiff brought her action
8 pursuant to Title VII of the Civil Rights Act of 1964. Dkt. #11 at 2. In her complaint, Plaintiff
9 alleges, amongst other things, that SPL discriminated against her when it failed to promote her
10 for ten years, treated her unfairly because of her speech and hearing impairments, failed to
11 accommodate her disability, and retaliated against her for filing an employment discrimination
12 charge with the Seattle Office for Civil Rights (“SOCR”). Dkts. #1 at 2 and #11 at 2. On April
13 9, 2015, Plaintiff filed an amended complaint. *See* Dkt. #11. Plaintiff’s complaint and
14 amendment were filed *pro se*.

15 Prior to filing suit, Plaintiff had filed two charges of discrimination with the SOCR.
16 Dkt. #28, Exs. B, C, G, and H. Plaintiff filed her first employment discrimination charge with
17 the SOCR on May 10, 2013. Dkt. #28, Ex. B at 14. Plaintiff’s May 2013 charge stemmed
18 from SPL’s alleged failure to promote Plaintiff to an LA IV position at SPL’s Fremont branch.
19 *Id.* at 13-14. SPL posted its open LA IV positions in February and March 2013. Dkt. #28, Ex.
20 D at 21-22. Plaintiff believed that she was denied the LA IV position because of her race,
21 national origin, age, and disability. *Id.* The SOCR sent Plaintiff’s employment discrimination
22 charge to the Equal Employment Opportunity Commission (“EEOC”) for dual filing purposes
23 on . *See Id.*, Ex. C. at 17.

1 In September 2013, after investigating Plaintiff's first employment discrimination
2 charge, the SOCR issued its Final Findings of Fact and Determination in favor of SPL. Dkt.
3 #28, Ex. D at 19-24. The SOCR determined that no reasonable cause existed to support a
4 finding that SPL committed an unfair practice when it chose another candidate for the LA IV
5 position. *Id.* at 23-24. Plaintiff appealed the SOCR's determination in October 2013. Dkt.
6 #28, Ex. E at 26. The Seattle Human Rights Commission's Appeals Committee ("Appeals
7 Committee") considered Plaintiff's appeal, and on January 7, 2014 the Appeals Committee
8 concluded that the SOCR's initial investigation of Plaintiff's failure-to-promote charge was
9 inadequate. *Id.* at 31. The SOCR's Findings of Fact and Determination were accordingly
10 remanded and the SOCR was ordered to conduct a more thorough investigation. *Id.*

11 Plaintiff filed her second employment discrimination charge on October 7, 2013. Dkt.
12 #28, Ex. G. The SOCR sent Plaintiff's second charge to the EEOC for dual filing purposes. *Id.*,
13 Ex. H. at 41. In her second charge, Plaintiff alleged that SPL retaliated against her for filing her
14 May 2013 failure-to-promote charge by issuing her negative performance reviews in April and
15 August 2013. *Id.*, Ex. G at 37-38. On May 9, 2014, the SOCR found no reasonable cause to
16 believe that SPL retaliated against Plaintiff. *Id.*, Ex. I at 47. On October 7, 2014, the EEOC
17 issued Plaintiff a right-to-sue letter. *Id.*, Ex. J at 49. This right to sue letter was issued in
18 connection with Plaintiff's October 2013 retaliation charge. *Id.* On December 31, 2014, within
19 90 days of receiving her right-to-sue letter, Plaintiff initiated the instant action. *See* Dkt. #1.

20 In March 2015, the SOCR administratively closed Plaintiff's May 2013 failure-to-
21 promote charge because Plaintiff's suit alleged the same claim. Dkt. #28, Ex. F at 34-35. The
22 SOCR informed Plaintiff that unless she requested EEOC review of SOCR's administrative
23 closure, the EEOC would "generally" adopt the SOCR's action. *Id.* at 34. Plaintiff was not
24

1 issued a right-to-sue letter for her May 2013 failure-to-promote charge. Dkt. #29 at 4. On July
2 15, 2015, Plaintiff was appointed counsel by the Court. Dkt. #16.

3 Pursuant to Rule 12(c), SPL now seeks to dismiss Plaintiff's complaint. Dkt. #27. In
4 response, Plaintiff filed a cross motion seeking leave to amend her complaint for a second time.
5 Dkt. #29.

6 **III. Legal Standards**

7 **A. Motion for Judgment on the Pleadings**

8 As long as trial is not delayed, a party can move for judgment on the pleadings after the
9 pleadings are closed. Fed. R. Civ. P. 12(c). Rule 12(c) motions challenge "the legal sufficiency
10 of the opposing party's pleadings." *Perez v. Wells Fargo and Co.*, 75 F. Supp. 3d 1184, 1187
11 (N.D. Cal. 2014) (internal quotes and citation omitted). If the moving party can establish, on the
12 face of the pleadings, that no material issue of fact remains unresolved and that it is entitled to
13 judgment as a matter of law, a judgment on the pleadings is proper. *Hal Roach Studios, Inc. v.*
14 *Richard Feiner and Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1989). The pleaded facts are
15 viewed in the light most favorable to the non-moving party. *Perez*, 75 F. Supp. 3d at 1187
16 (citing *Hoelt v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1301 (9th Cir. 1992)).

17 The same standard for granting a Rule 12(b)(6) motion applies to a Rule 12(c) motion for
18 judgment on the pleadings. See *Dworkin v. Hustler Magazine Inc.*, 867 F.2d 1188, 1192 (9th
19 Cir. 1989). To survive dismissal, complaints "must contain sufficient factual matter, accepted as
20 true, to 'state a claim to relief that is plausible on its face[.]'" *Ashcroft v. Iqbal*, 556 U.S. 662,
21 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Facial plausibility
22 can be established if a plaintiff pleads "factual content that allows the court to draw the
23 reasonable inference that the defendant is liable for the misconduct alleged." *Id.* If it appears
24 "beyond doubt" that a plaintiff cannot prove a set of facts that would entitle her to relief, the

plaintiff's claim will be dismissed. *SmileCare Dental Grp. v. Delta Dental Plan of Cal.*, 88 F.3d 780, 782-83 (9th Cir. 1996). A Rule 12(c) motion is converted into a Rule 56 motion for summary judgment where a court looks beyond the pleadings to resolve an issue. Fed. R. Civ. P. 12(d).

B. Leave to Amend

When a motion to dismiss is granted, the Court can grant a party leave to amend. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). After a party amends their pleading once as a matter of course, further amendments may only be made if the party obtains leave of the court, or if the adverse party consents to the amendment. Fed. R. Civ. P. 15(a)(2). Rule 15(a)(2) further advises courts to "freely give leave when justice so requires." Freely granting leave "when justice so requires," is "to be applied with extreme liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (internal quotes omitted). However, courts may decline to grant leave to amend where the non-moving party can demonstrate the existence of factors set out by the Supreme Court in *Foman v. Davis*. 371 U.S. 178, 182 (1962). The *Foman* factors include: "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment[.]" *Id.* The consideration of prejudice to the non-moving party carries the most weight when a court decides whether to grant leave to amend. *Eminence*, 316 F.3d. at 1052. If the court does not find prejudice or "a strong showing" of the *Foman* factors, "there exists a *presumption* under Rule 15(a) in favor of granting leave to amend." *Id.*

IV. Discussion¹

¹ Although both SPL and Plaintiff rely on Plaintiff's employment discrimination charges and other state agency documents to support their positions, the Court will not convert SPL's motion into a Rule 56 motion for summary judgment because these documents are state agency records which the Court may take judicial notice of. *Minor v.*

SPL seeks to dismiss Plaintiff's complaint on three grounds. *See* Dkt. #27 at 1-2. SPL first argues that Plaintiff cannot seek adjudication of her May 2013 failure-to-promote charge because Plaintiff has not exhausted the requisite administrative remedies. *Id.* at 5. SPL likewise contends that Plaintiff's failure to accommodate and hostile work environment harassment claims suffer from the same exhaustion of remedies failure; in any event, SPL argues that these claims are not like, or reasonably related to, either of Plaintiff's employment discrimination charges. *Id.* at 6-8. Finally, SPL argues that the retaliation claim for which Plaintiff was issued a right-to-sue letter must be dismissed because her pleading of that claim is conclusory and does not satisfy the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. *Id.* at 5.

In response, Plaintiff argues that her May 2013 failure-to-promote claim, along with the additional claims raised by her complaint, should not be dismissed because Plaintiff exhausted her administrative remedies adequately. Dkt. #29 at 7-12. As part of her response, Plaintiff filed a cross motion to seek leave to amend her complaint. *Id.* The Court will address each argument in turn.

A. Plaintiff's May 2013 Failure-to-Promote Claim Warrants Dismissal Because Plaintiff Has Not Exhausted Her Administrative Remedies.

The Court agrees that Plaintiff has not demonstrated that she has exhausted her administrative remedies for her May 2013 failure-to-promote claim. Plaintiffs who seek relief under Title VII must file an EEOC employment discrimination charge within 180 days of the alleged unlawful employment practice. *Surrell v. Cal. Water Serv. Co.*, 518 F.3d 1097, 1103-1104 (9th Cir. 2008) (citing 42 U.S.C. § 2000e-5(e)(1)). The filing deadline may be extended to

FedEx Office and Print Servs., Inc., 78 F. Supp. 3d 1021, 1027-28 (N.D. Cal. 2015) (citing *U.S. v. 14.02 Acres of Land More or Less in Fresno Cnty.*, 547 F.3d 943, 955 (9th Cir. 2008) ("Judicial notice is appropriate for records and reports of administrative bodies.")).

1 300 days if the employment discrimination charge is initially filed with a state or local
2 administrative agency that has the authority to grant or seek relief from the discriminatory
3 practice alleged. 42 U.S.C. § 2000e-5(e)(1). However, if the state or local administrative agency
4 terminates its proceedings, a claimant must file her EEOC discrimination charge within 30 days
5 of receiving notice of the termination of the proceedings. *Id.*; 29 U.S.C. § 626(d)(1)(B). If the
6 EEOC decides not to file suit based on a person's charge, it must notify the person that she can
7 file suit on her own behalf. 42 U.S.C. § 2000e-5(f)(1). Notice of the right to sue is given
8 through an EEOC right-to-sue letter. *Id.* A person then has 90 days to file suit upon receipt of
9 this letter. *Id.*

10 Although a right-to-sue letter is not a jurisdictional requirement for proceeding in federal
11 court, the requirement of a federal right-to-sue letter nonetheless remains. *Surrell*, 518 F.3d at
12 1104-1105; *also Adetuyi v. City and Cnty. of San Francisco*, 63 F. Supp. 3d 1073, 1082 (N.D.
13 Cal. 2014) (“[Plaintiff’s] failure to obtain a right-to-sue letter from the EEOC does not bar his
14 case, provided he is able to obtain one before trial.”). However, where a plaintiff is entitled to an
15 EEOC right-to-sue letter (for instance where the EEOC does not timely act upon a properly filed
16 charge), the Ninth Circuit has explained that a plaintiff’s federal suit may proceed even if the
17 plaintiff does not obtain this letter. *Surrell*, 518 F.3d at 1105. Plaintiffs may become entitled to
18 an EEOC right-to-sue letter if the state agency processing a plaintiff’s employment
19 discrimination claims issues the plaintiff a right-to-sue letter. *Id.*

20 Notably, a charge initially filed with a state or local administrative agency may be
21 constructively filed with the EEOC if a workshare agreement exists between the two agencies.
22 *E.E.O.C. v. Dinuba Med. Clinic*, 222 F.3d 580, 585 (9th Cir. 2000) (citing *Laquaglia v. Rio Hotel*
23 *& Casino, Inc.*, 186 F.3d 1172, 1175-76 (9th Cir. 1999)). Courts can determine when an EEOC
24 charge is filed by examining the language contained in workshare agreements between state

1 agencies and the EEOC. *Id.* at 585 (“Constructive filing is made possible by ‘worksharing
2 agreements,’ which designate the EEOC and the state agency each other’s agents for the purpose
3 of receiving charges.”). Under some workshare agreements, a charge initially filed with a state
4 or local administrative agency may be constructively filed with the EEOC following the 60-day
5 deferral period during which the state or local agency has the exclusive right to investigate the
6 charge. 42 U.S.C. § 2000e-5(c); 29 C.F.R. § 1601.13(b)(1). Constructive filing may occur
7 before the 60-day deferral period if the state agency terminates its proceedings earlier. *Id.* A
8 state may terminate its proceedings earlier if the state agency waives its 60-day deferral period in
9 its workshare agreement with the EEOC. *Laquaglia*, 186 F.3d at 1174-75.

10 Plaintiff has not obtained an EEOC right-to-sue letter, and she fails to establish that she is
11 entitled to one in the first place. First, and most importantly, Plaintiff has not explained to the
12 Court when she filed her charge with the EEOC. The Court is aware that Plaintiff filed her May
13 2013 failure-to-promote charge with the SOCR on May 10, 2013. Dkt. #28, Ex. B at 14. The
14 Court is further aware that this charge was at some point sent to the EEOC for dual filing
15 purposes. *See id.*, Ex. C. However, while a workshare agreement between a state agency and
16 the EEOC may result in the constructive filing of an EEOC charge, Plaintiff has not indicated
17 whether there is a workshare agreement between the SOCR and the EEOC. Without knowing
18 whether a workshare agreement exists, the Court cannot determine whether Plaintiff’s SOCR
19 charge was constructively filed with the EEOC. The notice indicating that Plaintiff’s charge was
20 sent to the EEOC for dual filing purposes is equally unhelpful, as it does not help the Court
21 determine when, if at all, Plaintiff’s charge was considered filed with the EEOC. *See* Dkt. #28,
22 Ex. C.

23 Besides failing to indicate when she filed her charge with the EEOC, Plaintiff also fails to
24 demonstrate that she is entitled to proceed in federal court under the Ninth Circuit’s holding in

1 *Surrell v. California Water Service Co*, 518 F.3d 1097 (9th Cir. 2008). In *Surrell*, the Ninth
2 Circuit held that plaintiffs may proceed in federal court without an EEOC right-to-sue letter as
3 long as they have obtained a right-to-sue letter from an appropriate state agency. 518 F.3d at
4 1105. Plaintiff's situation is easily distinguishable. On March 29, 2015, the SOCR's
5 investigation of Plaintiff's failure-to-promote charge was administratively closed because
6 Plaintiff filed her complaint in this suit. Dkt. #28, Ex. F at 34-35. Following its administrative
7 closure, the SOCR did not issue Plaintiff a right-to-sue letter. *See* Dkt. #29 at 4. Plaintiff also
8 did not receive notification from the EEOC that it had adopted the SOCR's action, nor did
9 Plaintiff receive a right-to-sue letter from the EEOC. *Id.* Although the EEOC's Notice of
10 Charge of Discrimination explained that the EEOC would contact Plaintiff if the SOCR
11 terminated its proceedings before issuing a final finding and order, Plaintiff explains that the
12 EEOC has not contacted her. *Id.* at 8. Because the EEOC has not explained whether it intends to
13 adopt the SOCR's decision to administratively close her failure-to-promote charge, the Court
14 cannot determine whether Plaintiff has become entitled to an EEOC right-to-sue letter. The
15 Court thus agrees that to the extent that Plaintiff's amended complaint raises her May 2013
16 failure-to-promote charge, this claim is premature and warrants dismissal.

17 The Court is equally unconvinced that Plaintiff's failure to obtain a right-to-sue letter
18 should be excused on equitable grounds. Plaintiff argues that her failure to obtain an EEOC
19 right-to-sue letter should be excused because she was confused as to the scope of the EEOC
20 right-to-sue letter she obtained for her EEOC retaliation charge. *Id.* at 8-9. However, Plaintiff
21 failed to obtain a right-to-sue letter even after she was appointed counsel in July 2015. Given
22 these circumstances, Plaintiff's failure to obtain a right-to-sue letter is not excused on equitable
23 grounds.
24

1 The Court thus GRANTS SPL's motion to dismiss Plaintiff's May 2013 failure-to-
 2 promote allegations without prejudice.

3 **B. Plaintiff Cannot Seek Adjudication of her ADA Failure to Accommodate and Hostile**
 4 **Work Environment Harassment Claims Because They are Not Like or Reasonably**
 5 **Related to Her Employment Discrimination Charges.**

6 The Court agrees that to the extent that Plaintiff seeks to assert a cause of action pursuant
 7 to the Americans with Disabilities Act ("ADA") for SPL's alleged failure to accommodate and
 8 SPL's alleged creation of a hostile work environment, Plaintiff's claims warrant dismissal.
 9 Federal courts cannot consider incidents of discrimination that are not included in a Plaintiff's
 10 EEOC charge unless those new allegations are "'like or reasonably related to the allegations
 11 contained in the [plaintiff's] EEOC charge.'" *Green v. Los Angeles Cnty. Superintendent of*
 12 *Schs.*, 883 F.2d 1472, 1475-76 (9th Cir. 1989) (quoting *Brown v. Puget Sound Elec.*
 13 *Apprenticeship & Training Trust*, 732 F.2d 726, 729 (9th Cir. 1984)). An allegation is like or
 14 reasonably related to previous EEOC charge allegations if the prior EEOC charge investigation
 15 encompasses the additional allegations. *Id.* at 1476. If an actual EEOC investigation of the prior
 16 charge was not conducted, an allegation is nonetheless like or reasonably related to a prior EEOC
 17 charge if the charge falls within the scope of an "EEOC investigation which can reasonably be
 18 expected to grow out of the charge of discrimination." *Sosa v. Hiraoka*, 920 F.2d 1451, 1456
 19 (9th Cir. 1990) (internal quotes omitted). Allegations may also be reasonably related to
 20 allegations included in an EEOC charge "to the extent that those claims are consistent with the
 21 plaintiff's original theory of the case." *B.K.B. v. Maui Police Dept.*, 276 F.3d 1091, 1100 (9th
 22 Cir. 2002) (citing *E.E.O.C. v. Farmer Bros. Co.*, 31 F.3d 891, 899 (9th Cir. 1994)).

23 Plaintiff's ADA failure to accommodate and hostile work environment harassment claims
 24 are not like or reasonably related to either of Plaintiff's employment discrimination charges.
 Plaintiff's May 2013 failure-to-promote charge was solely related to SPL's alleged failure to hire

1 Plaintiff for an LA IV position due to her age, disability, national origin, and race. *See* Dkt. #28,
2 Ex. B at 13-14. In this charge, Plaintiff solely alleges that she believes she was discriminated
3 against on the bases of age, disability, nationality, and race when SPL did not promote her from
4 her position as an LA II, to the position of LA IV. Dkt. #28, Ex. B. At no point in that charge
5 does Plaintiff claim that SPL failed to accommodate her disability, nor does Plaintiff give any
6 indication that she was subjected to a hostile work environment. *See id.* Given Plaintiff's May
7 2013 failure-to-promote charge, the Court does not agree that Plaintiff's ADA failure to
8 accommodate or harassment claims fell within the scope of an EEOC investigation "reasonably
9 expected to grow out of" Plaintiff's May 2013 failure-to-promote discrimination charge.

10 The Court is equally unpersuaded that the SOCR's actual investigation of Plaintiff's May
11 2013 failure-to-promote charge encompassed her ADA failure to accommodate and harassment
12 claims. Plaintiff attempts to convince the Court otherwise by pointing to interview statements
13 taken by the SOCR. *See* Dkt. #31, Ex. B. However, these statements do not allege the failure to
14 accommodate or harassment claims Plaintiff now seeks to raise. *Id.* Additionally, as explained
15 in section A., Plaintiff has failed to exhaust her administrative remedies with respect to her May
16 2013 failure-to-promote charge. Consequently, even if the Court determined that Plaintiff's
17 additional claims fall within the scope of an EEOC investigation reasonably expected to grow
18 out of Plaintiff's May 2013 failure-to-to promote charge, Plaintiff would nonetheless be
19 precluded from seeking adjudication of these claims in federal court.

20 Plaintiff's second employment discrimination charge, like her failure-to-promote charge,
21 was similarly narrow in scope (alleging one sole instance of retaliation in August 2013) and the
22 SOCR's investigation of this claim did not encompass Plaintiff's additional claims. *See* Dkt.
23 #28, Ex. I at 43-47. Plaintiff does not argue to the contrary. *See* Dkt. #29 at 9-12.

1 Because Plaintiff's ADA failure to accommodate and hostile work environment claims
2 are not like or reasonably related to either of Plaintiff's employment discrimination charges, the
3 Court agrees that Plaintiff has failed to exhaust her administrative remedies with respect to those
4 claims. The Court thus GRANTS SPL's motion to dismiss Plaintiff's ADA failure to
5 accommodate and hostile work environment harassment claims with prejudice.

6 **C. Plaintiff's Title VII Retaliation Claims Warrant Dismissal.**

7 SPL contends that Plaintiff's Title VII retaliation claims warrant dismissal for two
8 reasons. First, SPL points out that Plaintiff has only exhausted her administrative remedies for
9 the second employment discrimination charge filed with the SOCR. Dkt. #33 at 7. Plaintiff's
10 second employment discrimination charge was filed in October 2013. Dkt. #28, Ex. G. In her
11 October 2013 charge, Plaintiff alleged that she was given negative performance reviews in April
12 2013 and August 2013 in retaliation for filing her May 2013 failure-to-promote charge. *Id.* at
13 37-38. The SOCR investigated Plaintiff's claims, but did not find reasonable cause to believe
14 that Plaintiff had been retaliated against. *Id.*, Ex. I. The SOCR subsequently issued a right-to-
15 sue letter in connection with Plaintiff's October 2013 retaliation claim. *Id.*, Ex. J. Because
16 Plaintiff's Amended Complaint does not identify her 2013 performance reviews as the adverse
17 actions taken against her, SPL contends that Plaintiff's Amended Complaint does not contain
18 sufficient factual matter to state a plausible claim for relief. Dkt. #27 at 10. SPL further argues
19 that to the extent Plaintiff's retaliation claims are not premised on the adverse action for which
20 Plaintiff was issued a right-to-sue letter, Plaintiff has failed to exhaust her administrative
21 remedies and those additional retaliation claims also warrant dismissal. Dkt. #33 at 7-8.

22 The Court agrees that Plaintiff's Title VII retaliation claims warrant dismissal. Courts
23 may dismiss a claim for failure to state a claim upon which relief can be granted where there is a
24 "lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable

1 legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). However,
2 documents filed *pro se* must be “liberally construed.” *Erickson v. Pardus*, 551 U.S. 89, 94
3 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). *Pro se* filings are also held to
4 “less stringent standards than formal pleadings drafted by lawyers.” *Id.* (quoting *Haines v.*
5 *Kerner*, 404 U.S. 519, 520-21 (1972)). Although Plaintiff was issued a right-to-sue letter for her
6 October 2013 retaliation charge, her Amended Complaint (which she filed *pro se*) does not
7 identify her 2013 performance reviews as the retaliatory acts taken against her. Dkt. #11 at 3, 5.
8 Instead, Plaintiff’s Amended Complaint alleges that she was retaliated against during the
9 investigation of her May 2013 failure-to-promote charge without identifying the adverse action
10 taken against her. *Id.* at 5. Plaintiff’s Amended Complaint instead lists one adverse action: the
11 issuance of a written reprimand in May 2014. *Id.* at 3. Although Plaintiff argues that it is
12 “plausible” that her written reprimand was issued in retaliation for filing her employment
13 discrimination charges, she fails to demonstrate that she exhausted her Title VII administrative
14 remedies with respect to that adverse action. Plaintiff also fails to demonstrate that this new
15 allegation of retaliation is like or reasonably related to her October 2013 retaliation charge, and it
16 is unlikely that the SOCR investigation of Plaintiff’s October 2013 retaliation charge would have
17 encompassed Plaintiff’s May 2014 retaliation charge given that the SOCR’s investigation of
18 Plaintiff’s October 2013 retaliation charge concluded in May 2014. *See* Dkt. #28, Ex. I.

19 Because Plaintiff’s complaint does not plead any facts to support the claim that she was
20 retaliated against in 2013, Plaintiff’s Title VII retaliation claims warrant dismissal. However, the
21 Court grants Plaintiff leave to amend her complaint to assert a retaliation claim consistent with
22 the right-to-sue letter she received from the EEOC. To the extent that Plaintiff’s Amended
23 Complaint is premised on acts of retaliation for which she was not issued a right-to-sue letter,
24

1 Plaintiff's complaint warrants dismissal with prejudice. The Court thus GRANTS SPL's motion
2 to dismiss Plaintiff's Title VII retaliation claims.

3 **D. Plaintiff's Request for Leave to Amend.**

4 Plaintiff's cross motion seeks leave to amend her complaint "to more clearly assert
5 claims that she has already adequately pleaded *pro se*." Dkt. #29 at 14. Plaintiff specifically
6 seeks to amend her complaint to add the following claims: 1) failure to promote claims under the
7 ADA, ADEA, and Title VII; 2) an ADA failure to accommodate claim; 3) a hostile work
8 environment claim; 4) a claim of retaliation under the ADA; and 5) corresponding state law
9 claims. *See* Dkt. #31, Ex. A. SPL contends that granting Plaintiff leave to amend her complaint
10 to assert these causes of action would be futile because Plaintiff has not exhausted her
11 administrative remedies with respect to those claims. Dkt. #33 at 8-10. However, SPL is not
12 opposed to allowing Plaintiff to amend her complaint to add a claim under 42 U.S.C. § 1981. *Id.*
13 at 2.

14 The Court agrees that Plaintiff failed to exhaust her administrative remedies with respect
15 to her ADA failure to accommodate claim, her hostile work environment claim, and her ADA
16 retaliation claim. A proposed amendment is considered futile "if no set of facts can be proved
17 under the amendment to the pleadings that would constitute a valid and sufficient claim[.]"
18 *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988). SPL has demonstrated that it
19 would be futile for Plaintiff to amend her complaint to add these additional claims because
20 Plaintiff failed to exhaust her administrative remedies with respect to those claims.
21 Additionally, as explained in sections **B.** and **C.**, Plaintiff has also failed to demonstrate that an
22 investigation of either of her employment discrimination charges would have encompassed these
23 additional claims, and the Court does not agree that Plaintiff's additional claims are consistent
24 with the original theories of discrimination presented in Plaintiff's employment discrimination

1 charges. The Court thus DENIES Plaintiff's cross motion for leave to amend her complaint to
 2 add her ADA failure to accommodate claim, her hostile work environment claim, and her ADA
 3 retaliation claim.

4 Because Plaintiff has not exhausted her administrative remedies with respect to her May
 5 2013 failure-to-promote claim, the Court also DENIES Plaintiff's cross motion for leave to
 6 amend her complaint to add the ADA and the ADEA as additional bases of discrimination for
 7 her May 2013 failure-to-promote claim.

8 However, Plaintiff is GRANTED leave to amend her complaint to list an employment
 9 discrimination charge under 42 U.S.C. § 1981. Additionally, because Plaintiff filed a pre-suit
 10 claim with the City of Seattle in January 2016, Plaintiff is also GRANTED leave to amend her
 11 complaint to add her proposed state law claims. RCW 4.96.020(2).

12 Plaintiff's Cross Motion to Amend is accordingly GRANTED in part and DENIED in
 13 part.

13 **V. Conclusion**

14 For the reasons stated above, the Court GRANTS SPL's motion for judgment on the
 15 pleadings and GRANTS in part and DENIES in part Plaintiff's cross motion to amend her
 16 complaint. Plaintiff is granted leave to amend her complaint to include an employment
 17 discrimination charge under 42 U.S.C. § 1981, as well as leave to amend her complaint to add
 18 her proposed state law claims within twenty-one (21) days of entry of this Order.

19 DATED this 21st day of June, 2016.

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 21 

22
 23 The Honorable Richard A. Jones
 24 United States District Judge